SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 1031

MARGARET B. CARPENTER AND L. E. CARPENTER,
ALSO KNOWN AS LE ROY E. CARPENTER,
Petitioners,

vs.

ARCHIBALD J. HAMILTON.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

I.

Specification of Errors.

Petitioners assign the following errors in the record and proceedings below:

(1) The trial court below deprives the petitioners of property without due process of law, as guaranteed by the XIV Amendment to the Constitution of the United States of America, in rejecting the petitioners' proffer of proof that the respondent was guilty of "unclean hands".

(2) The court below, the Supreme Court of California, abridged the petitioners' property without due process of

law, as guaranteed by the XIV Amendment to the Constitution of the United States of America, by affirming the ruling of the trial court rejecting the petitioners' proffer of proof of the respondent's "unclean hands".

II.

Summary of Argument.

Point 1.

The petitioners have been deprived of their property without due process of law under the XIV Amendment to the Constitution of the United States of America, in that petitioners were denied a hearing in the trial court below through refusal of that court to permit petitioners to offer evidence as to their affirmative defense of plaintiff's unconscionable conduct in connection with the matter at issue.

The defense of petitioners with respect to plaintiff's unconscionable conduct was in effect the defense that plaintiff had come into equity with "unclean hands". This equitable doctrine is a fundamental of equity jurisprudence [6] and one exclusively within the jurisdiction of equity.[7]

The trial court sustained the objection to petitioners' proffer of proof as to this defense on the ground that there had been a prior adjudication of the matter and that said adjudication was had in the previous action brought by petitioners against plaintiff Hamilton for damages for fraudulent representations made by Hamilton on the sale of certain real property to petitioners.

There had been no such prior adjudication. The question of plaintiff's "unclean hands" was not in issue in the

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[6] *Keystone Driller Co.* v. *Gen'l Excavator Co.* (*supra*); *Horton* v. *Little et al.* (*supra*); *American Assn.* v. *Innis* (*supra*).

[7] *Harns* v. *Stern*, 229 Fed. 42, 145 C. C. A. 2; *Hills* v. *Sherwood*, 48 Cal. 386.

action for fraud.[8] Furthermore, the decision and judgment of the California District Court of Appeals for the Second Appellate District setting aside the verdict of the jury in the trial court and ordering judgment for the defendant in that action was based on the view that plaintiffs in that action, your petitioners here, had the opportunity of discovering the fraud of the defendant and had failed to do so, and was not based on a holding that the defendant was free of all fraudulent conduct (Opinion of District Court of Appeals (R. 38)).

The foreclosure proceeding was one in equity. The plaintiff, Hamilton, defendant in the fraud action, was seeking to foreclose on the property he had sold to petitioners through his fraudulent representations. Your petitioners contend that the amount of the purchase price for said property was due to the fraudulent representation of Hamilton and that the trust deed, the lien of which was sought to be foreclosed, had been set at an excessive amount because of those same fraudulent representations. Hence Hamilton had been guilty of "unclean hands" in the transaction of which the trust deed was a part and being so guilty could not come into equity seeking foreclosure under a trust deed the amount of which had been fixed because of his fraudulent representations as to the value of the property. (See allegations set forth in the third defense of petitioners' answer.) (R. 10, *et seq.*)

Petitioners were entitled to set up Hamilton's unconscionable conduct as a defense to his action in foreclosure.

B. & O. R. Co. v. *U. S.*, 298 U. S. 349, 364, *et seq.*, 80 L. Ed. 1209, 56 S. Ct. 797;

Wash. ex rel. Ore. R. R., etc. v. *Fairchild,* 224 U. S. 510, 56 L. Ed. 863, 32 S. Ct. 535;

Ga. R. & Elec. Co. v. *Decatur, supra;*

Carolene Products Co. v. *McLaughlin, supra.*

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[8] *Lillis* v. *Immigrant Ditch Co.*, 95 Cal. 553, 30 P. 1108. See *Brandt* v. *Krogh*, 14 Cal. App. 39, 51, 52; 111 P. 275.

This they were precluded from doing by the trial court's arbitrary ruling, which ruling has now been affirmed by the Supreme Court of California.

The defense of "unclean hands" constituted petitioners' sole complete defense to the action in foreclosure. To deny them the opportunity of presenting this defense was, in effect, to deny them a hearing and an opportunity to defend their property against foreclosure. This constituted a denial of due process, as guaranteed by the Federal Constitution.

A party has the right to the opportunity, when in court, to establish any fact, which, according to the usages of common law or the provisions of the Constitution, would be a protection to his property,[9] and where the matter or fact sought to be established is essential to the substance of a hearing, a denial of the opportunity to establish such fact is a denial of due process.[10]

III.

Conclusion.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A. L. WIRIN,
Attorney for Petitioners.

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[9] 12 Am. Jur. 314, Sec. 622 and cases cited in Note 16.

[10] *Palko* v. *State of Connecticut*, 302 U. S. 219, 58 S. Ct. 149.